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Attorneys for Plaintiff

ZIM INTEGRATED SHIPPING SERVICES LTD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ZIM INTEGRATED SHIPPING SERVICES LTD.

Plaintiff,

Civ. Action No.: 23 Civ. 2680

-against-

COMPLAINT

NEWPORT TANK CONTAINERS (USA) LLC,
Defendant.

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Plaintiff, ZIM INTEGRATED SHIPPING SERVICES LTD., by its attorneys, Montgomery, McCracken, Walker & Rhoads, LLP, for its Complaint against Defendant NEWPORT TANK CONTAINERS (USA) LLC, its subsidiaries and affiliates upon information and belief, alleges as follows:

PARTIES

1. At all material times Plaintiff, ZIM INTEGRATED SHIPPING SERVICES LTD. (“ZIM” or “Plaintiff”), was and still is a corporation or other business entity organized and existing under and by virtue of the laws of the country of Israel, with an office and principal place of business at 9 Andrei Sakharov St. Matam, P.O.B. 1723, Haifa 31016 Israel.
2. ZIM is engaged in the shipping business a vessels’ owner, operator and carrier of goods by sea globally, including to and from the United States.

3. ZIM does business in the United States through its local agent nonparty ZIM AMERICAN INTEGRATED SHIPPING LLC, a New York corporation with its office and principal place of business located at 5801 Lake Wright Dr, Norfolk, VA 23502.

4. Upon information and belief, at all material times, Defendant, NEWPORT TANK CONTAINERS (USA) LLC (“NTC USA” or “Defendant”) was and still is a company organized and existing under the laws of the State of Ohio, with offices and principal place of business located at 2055 Crocker Road, Suite 300 Westlake, Ohio 44145 and with an office located at 250 Assay St, Suite 328 77044 Houston, TX.

5. Upon information and belief, at all material times, NTC USA was and still is engaged in the business of shipping bulk liquid logistics services in tank containers worldwide.

SUBJECT MATTER AND PERSONAL JURISDICTION

6. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty or maritime claim within the meaning of 28 U.S.C. § 1333 and Rule 9(h) of the Federal Rules of Civil Procedure.

7. The Court has also jurisdiction pursuant to the terms and conditions of the applicable sea waybill of lading which provides that all disputes under the sea waybill shall be resolved in the United States District Court for the Southern District of New York.

FACTUAL BACKGROUND & CLAIMS FOR RELIEF

8. On or about March 30, 2019, NTC USA as “Shipper” of record engaged ZIM to ship the cargoes described in Schedule A from the United States to India (“Cargo”).

9. On or about March 30, 2019, ZIM transported the cargoes described in Schedule A from the United States to India on behalf of NTC USA’s pursuant to the bill of lading contract (“Contract of Carriage”) that is fully identified in Schedule A and also attached as Exhibit A.

10. The Contract of Carriage specifies that the ISO Tanks (“Container Tank/s”) tendered for shipment to ZIM had been loaded by the shipper NTC USA.

11. By entering into the Contract of Carriage and being listed as the “Shipper” under the same NTC USA is bound by the terms and conditions of the Contract of Carriage.

12. On or about May 14, 2019, while the cargo was in transit to its final destination it was noted that certain Container Tanks presented signs of leakage.

13. On 23 and 28, 2019, ZIM’s appointed surveyors inspected the Container Tanks at the DP World terminal 2 in Jebel Ali, United Arab Emirates and determined Container Tank No. RLTU1001622 leaked due to same being filled above the recommend amount.

14. As a result of NTC USA’s failure to properly fill the Container Tank No. RLTU1001622 ZIM suffered damages in the amount of \$75,000, as best as it can now be estimated, in surveyors and cleanup related costs.

COUNT I – BREACH OF CONTRACT

15. ZIM repeats and re-alleges all allegations set forth in paragraphs 1 through 14 as if fully set forth herein.

16. NTC USA had an obligation under the Contract of Carriage to safely prepare for shipment the cargo described in Schedule A and Exhibit A.

17. By failing to safely prepare for the shipment Container Tank No. RLTU1001622, as evidenced by same leaking due to overfilling, NTC USA is in breach of the Contract of Carriage with ZIM.

18. ZIM has performed all of its obligations under the Contract of Carriage described in Schedule A and Exhibit A.

19. As a result of NTC USA's breach of the Contract of Carriage described in Schedule A ZIM has suffered damages in the amount of no less than \$75,000.

20. Therefore, NTC USA is liable to ZIM for damages in the amount of no less than \$75,000, plus interests and costs.

WHEREFORE, Plaintiff ZIM prays:

- a) That process in due form of law may issue against Defendant NTC USA citing them to appear and answer all and singular the matters aforesaid.
- b) That judgment be entered in favor of Plaintiff, ZIM, against Defendant, NTC USA, in the amount of at least \$75,000, and for any and all other proximately caused damages.
- c) That Plaintiff ZIM be awarded interest, costs, disbursements, and reasonable attorney's fees in an amount to be determined at trial; and
- d) Such other and further relief that this Court may deem just and proper under the circumstances.

Dated: New York, New York
March 30, 2023

Respectfully submitted,

Montgomery McCracken Walker & Rhoads LLP
Attorneys for Plaintiff

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